

1 SENATE BILL 146

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

3 INTRODUCED BY

4 Cynthia Nava

5  
6  
7  
8 FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

9  
10 AN ACT

11 RELATING TO PUBLIC SCHOOL FACILITIES; AMENDING THE PUBLIC  
12 SCHOOL CAPITAL OUTLAY ACT TO CREATE THE PUBLIC SCHOOL FACILITY  
13 OPPORTUNITY FUND, TO AUTHORIZE GRANTS FROM THE FUND TO CERTAIN  
14 SCHOOL DISTRICTS FOR CERTAIN PURPOSES, TO PROVIDE SUPPLEMENTAL  
15 FUNDING FOR PROJECTS IN CERTAIN SCHOOL DISTRICTS, TO REDUCE THE  
16 OFFSET FROM A GRANT AWARD FOR CERTAIN APPROPRIATIONS MADE FOR  
17 JOINT USE WITH A GOVERNMENTAL ENTITY, TO CHANGE THE PROCEDURE  
18 FOR MAKING PAYMENTS FOR EXPENDITURES INCURRED TO INSPECT AND  
19 PERMIT PROJECTS, TO PROVIDE AN INCREASED GRANT AWARD TO THOSE  
20 SCHOOL DISTRICTS WITH AN EXEMPLARY RECORD OF PREVENTIVE  
21 MAINTENANCE AND TO CHANGE THE MEMBERSHIP OF THE PUBLIC SCHOOL  
22 CAPITAL OUTLAY OVERSIGHT TASK FORCE; AMENDING THE PUBLIC SCHOOL  
23 CAPITAL IMPROVEMENTS ACT TO AUTHORIZE THE IMPOSITION OF AN  
24 ADDITIONAL MILL; PROVIDING FOR A DISTRIBUTION TO THE PUBLIC  
25 SCHOOL FACILITY OPPORTUNITY FUND FOR A LIMITED PERIOD;

.170876.3

underscoring material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1 EXTENDING THE EXPENDITURE PERIOD FOR A CERTAIN APPROPRIATION;  
2 MAKING AN APPROPRIATION.

3  
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

5 Section 1. A new section of the Public School Capital  
6 Outlay Act, Section 22-24-12 NMSA 1978, is enacted to read:

7 "22-24-12. [NEW MATERIAL] PUBLIC SCHOOL FACILITY  
8 OPPORTUNITY FUND--FINDINGS--GRANTS FROM THE FUND.--

9 A. The legislature finds that:

10 (1) for many years, until relatively recently,  
11 educational facilities in a few school districts in New Mexico  
12 were so inadequate, due to a lack of local resources, that the  
13 quality of education offered to students in those school  
14 districts could not match the quality of education provided by  
15 districts with more resources;

16 (2) in response to these inequities, the  
17 legislature has implemented a program to bring all public  
18 schools up to statewide adequacy standards;

19 (3) most school districts in this state either  
20 contain enough taxable property with sufficient assessed  
21 valuation or have other additional local resources available  
22 for schools so that their public school facilities can exceed  
23 the minimum statewide adequacy standards;

24 (4) however, because of a low total assessed  
25 property valuation and a continuing shortage in other available

.170876.3

underscoring material = new  
[bracketed material] = delete

1 local resources, some school districts will not be able to  
2 exceed statewide adequacy standards in the foreseeable future  
3 and, therefore, will not have the opportunity to provide their  
4 students with the same quality of educational facilities as  
5 students in school districts that have available resources to  
6 surpass the minimum standards; and

7 (5) a program is needed to provide state  
8 support to those qualifying school districts that do not have  
9 any other resources available to provide their students with  
10 some of the educational facilities that school districts with  
11 more available resources are able to provide.

12 B. The "public school facility opportunity fund" is  
13 created in the state treasury. The fund shall consist of  
14 transfers, appropriations, reversions, gifts, grants, donations  
15 and bequests made to the fund. Income from the fund shall be  
16 credited to the fund, and money in the fund shall not revert or  
17 be transferred to any other fund at the end of a fiscal year.  
18 Money in the fund is appropriated to the council for the  
19 purpose of making grants so that the facilities of qualifying  
20 school districts may, pursuant to the requirements of this  
21 section, exceed statewide adequacy standards. Expenditures  
22 from the fund shall be made on warrant of the secretary of  
23 finance and administration pursuant to vouchers signed by the  
24 director of the public school facilities authority.

25 C. A school district may apply for a grant from the

.170876.3

underscored material = new  
[bracketed material] = delete

1 public school facility opportunity fund if the council  
2 determines that:

3 (1) the project is included in the school  
4 district's five-year facilities plan and the school district  
5 meets all qualifications to apply for a grant pursuant to  
6 Section 22-24-5 NMSA 1978 and meets the requirements of  
7 Subparagraphs (b), (c), (d) and (g) of Paragraph (9) of  
8 Subsection B of that section;

9 (2) the value calculated for the school  
10 district pursuant to Subparagraph (k), (m), (n) or (o) of  
11 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978 is  
12 equal to or greater than seven-tenths;

13 (3) averaged over the previous four property  
14 tax years, the school district had a residential property tax  
15 rate of at least nine dollars (\$9.00) on each one thousand  
16 dollars (\$1,000) of taxable value, as measured by the sum of  
17 all rates imposed by resolution of the local school board plus  
18 rates set to pay interest and principal on outstanding school  
19 district general obligation bonds;

20 (4) at least seventy percent of the students  
21 in the school district are eligible for free or reduced-fee  
22 lunch;

23 (5) the school district does not have  
24 sufficient resources nor projected resources in the next four  
25 years to expend on school district facilities for the purpose

.170876.3

underscoring material = new  
[bracketed material] = delete

1 of exceeding the statewide adequacy standards;

2 (6) the local community does not have adequate  
3 infrastructure to compensate for the school district's lack of  
4 resources; and

5 (7) the planned use of the additional grant  
6 will enhance public school education in the school district,  
7 will further the school district's educational plan for student  
8 success and is a prudent use of state money.

9 D. Applications for grant assistance from the  
10 public school facility opportunity fund shall be made by school  
11 districts to the council in accordance with the requirements of  
12 the council. The council shall, pursuant to criteria adopted  
13 by rule, evaluate applications and prioritize those  
14 applications most in need of a grant from the fund and, to the  
15 extent that money in the fund is available, may award grants  
16 for those prioritized applications. The evaluation criteria  
17 for school district applications shall be based primarily upon  
18 the school district's detailed description of how the proposed  
19 facilities or improvements play an essential role in the  
20 district's programmatic priorities and how they contribute to  
21 meeting goals and objectives in the school district or the  
22 school educational plan for student success.

23 E. All provisions of the Public School Capital  
24 Outlay Act relating to the expenditure of grants awarded from  
25 the public school capital outlay fund, including those relating

.170876.3

underscored material = new  
[bracketed material] = delete

1 to reporting, oversight, project access and accountability,  
2 apply to the use and expenditure of grants made pursuant to  
3 this section. In addition, in awarding grants pursuant to this  
4 section, the council may require conditions and procedures  
5 necessary to ensure that the money is expended in the most  
6 prudent manner."

7 Section 2. Section 22-24-4 NMSA 1978 (being Laws 1975,  
8 Chapter 235, Section 4, as amended) is amended to read:

9 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--  
10 USE.--

11 A. The "public school capital outlay fund" is  
12 created. Balances remaining in the fund at the end of each  
13 fiscal year shall not revert.

14 B. Except as provided in Section 22-24-5.8 NMSA  
15 1978 and in Subsections G through L of this section, money in  
16 the fund may be used only for capital expenditures deemed  
17 necessary by the council [~~necessary~~] for an adequate  
18 educational program.

19 C. The council may authorize the purchase by the  
20 public school facilities authority of portable classrooms to be  
21 loaned to school districts to meet a temporary requirement.  
22 Payment for these purchases shall be made from the fund. Title  
23 and custody to the portable classrooms shall rest in the public  
24 school facilities authority. The council shall authorize the  
25 lending of the portable classrooms to school districts upon

.170876.3

underscored material = new  
[bracketed material] = delete

1 request and upon finding that sufficient need exists.  
2 Application for use or return of state-owned portable classroom  
3 buildings shall be submitted by school districts to the  
4 council. Expenses of maintenance of the portable classrooms  
5 while in the custody of the public school facilities authority  
6 shall be paid from the fund; expenses of maintenance and  
7 insurance of the portable classrooms while in the custody of a  
8 school district shall be the responsibility of the school  
9 district. The council may authorize the permanent disposition  
10 of the portable classrooms by the public school facilities  
11 authority with prior approval of the state board of finance.

12 D. Applications for assistance from the fund shall  
13 be made by school districts to the council in accordance with  
14 requirements of the council. Except as provided in Subsection  
15 K of this section, the council shall require as a condition of  
16 application that a school district have a current five-year  
17 facilities plan, which shall include a current preventive  
18 maintenance plan to which the school adheres for each public  
19 school in the school district.

20 E. The council shall review all requests for  
21 assistance from the fund and shall allocate funds only for  
22 those capital outlay projects that meet the criteria of the  
23 Public School Capital Outlay Act.

24 F. Money in the fund shall be disbursed by warrant  
25 of the department of finance and administration on vouchers

.170876.3

underscored material = new  
[bracketed material] = delete

1 signed by the secretary of finance and administration following  
2 certification by the council that an application has been  
3 approved or an expenditure has been ordered by a court pursuant  
4 to Section 22-24-5.4 NMSA 1978. At the discretion of the  
5 council, money for a project shall be distributed as follows:

6 (1) up to ten percent of the portion of the  
7 project cost funded with distributions from the fund or five  
8 percent of the total project cost, whichever is greater, may be  
9 paid to the school district before work commences with the  
10 balance of the grant award made on a cost-reimbursement basis;  
11 or

12 (2) the council may authorize payments  
13 directly to the contractor.

14 G. Balances in the fund may be annually  
15 appropriated for the core administrative functions of the  
16 public school facilities authority pursuant to the Public  
17 School Capital Outlay Act and, in addition, balances in the  
18 fund may be expended by the public school facilities authority,  
19 upon approval of the council, for project management expenses;  
20 provided that:

21 (1) the total annual expenditures from the  
22 fund pursuant to this subsection shall not exceed five percent  
23 of the average annual grant assistance authorized from the fund  
24 during the three previous fiscal years; and

25 (2) any unexpended or unencumbered balance

.170876.3

underscored material = new  
[bracketed material] = delete

1 remaining at the end of a fiscal year from the expenditures  
2 authorized in this subsection shall revert to the fund.

3 H. Up to thirty million dollars (\$30,000,000) of  
4 the fund may be allocated annually by the council in fiscal  
5 years 2006 and 2007 for a roof repair and replacement  
6 initiative with projects to be identified by the council  
7 pursuant to Section 22-24-4.3 NMSA 1978; provided that all  
8 money allocated pursuant to this subsection shall be expended  
9 prior to September 1, 2008.

10 I. The fund may be expended annually by the council  
11 in fiscal years 2006 through 2020 for grants to school  
12 districts for the purpose of making lease payments for  
13 classroom facilities, including facilities leased by charter  
14 schools. The grants shall be made upon application by the  
15 school districts and pursuant to rules adopted by the council;  
16 provided that an application on behalf of a charter school  
17 shall be made by the school district but, if the school  
18 district fails to make an application on behalf of a charter  
19 school, the charter school may submit its own application. The  
20 following criteria shall apply to the grants:

21 (1) the amount of a grant to a school district  
22 shall not exceed:

23 (a) the actual annual lease payments  
24 owed for leasing classroom space for schools, including charter  
25 schools, in the district; or

.170876.3

underscored material = new  
[bracketed material] = delete

1 (b) seven hundred dollars (\$700)  
2 multiplied by the number of MEM using the leased classroom  
3 facilities; provided that in fiscal year 2009 and in each  
4 subsequent fiscal year, this amount shall be adjusted by the  
5 percentage increase between the penultimate calendar year and  
6 the immediately preceding calendar year of the consumer price  
7 index for the United States, all items, as published by the  
8 United States department of labor; and provided further that if  
9 the total grants awarded pursuant to this paragraph would  
10 exceed the total annual amount available, the rate specified in  
11 this subparagraph shall be reduced proportionately;

12 (2) a grant received for the lease payments of  
13 a charter school may be used by that charter school as a state  
14 match necessary to obtain federal grants pursuant to the  
15 federal No Child Left Behind Act of 2001;

16 (3) at the end of each fiscal year, any  
17 unexpended or unencumbered balance of the appropriation shall  
18 revert to the fund;

19 (4) if the lease payments are made pursuant to  
20 a financing agreement under which the facilities may be  
21 purchased for a price that is reduced according to the lease  
22 payments made:

23 (a) a grant shall not be made unless the  
24 council determines that the leased facilities meet the  
25 statewide adequacy standards; and

.170876.3

underscored material = new  
[bracketed material] = delete

1 (b) neither a grant nor any provision of  
2 the Public School Capital Outlay Act creates a legal obligation  
3 for the school district or charter school to continue the lease  
4 from year to year or to purchase the facilities nor does it  
5 create a legal obligation for the state to make subsequent  
6 grants pursuant to the provisions of this subsection;

7 (5) the total amount expended from the fund  
8 pursuant to this subsection shall not exceed:

9 (a) seven million five hundred thousand  
10 dollars (\$7,500,000) in fiscal year 2007; and

11 (b) in fiscal year 2008 and each  
12 subsequent fiscal year, the maximum amount for the previous  
13 fiscal year adjusted by the percentage increase between the  
14 penultimate calendar year and the immediately preceding  
15 calendar year of the consumer price index for the United  
16 States, all items, as published by the United States department  
17 of labor; and

18 (6) as used in this subsection:

19 (a) "MEM" means: 1) the average  
20 full-time-equivalent enrollment using leased classroom  
21 facilities on the eightieth and one hundred twentieth days of  
22 the prior school year; or 2) in the case of an approved charter  
23 school that has not commenced classroom instruction, the  
24 estimated full-time-equivalent enrollment that will use leased  
25 classroom facilities in the first year of instruction, as shown

.170876.3

underscored material = new  
[bracketed material] = delete

1 in the approved charter school application; provided that,  
2 after the eightieth day of the school year, the MEM shall be  
3 adjusted to reflect the full-time-equivalent enrollment on that  
4 date; and

5 (b) "classroom facilities" or "classroom  
6 space" includes the space needed, as determined by the minimum  
7 required under the statewide adequacy standards, for the direct  
8 administration of school activities.

9 J. In addition to other authorized expenditures  
10 from the fund, up to one percent of the average grant  
11 assistance authorized from the fund during the three previous  
12 fiscal years may be expended in each fiscal year by the public  
13 school facilities authority to [~~reimburse~~] pay the state fire  
14 marshal, the construction industries division of the regulation  
15 and licensing department and local jurisdictions having  
16 authority from the state to permit and inspect projects for  
17 expenditures made to permit and inspect projects funded in  
18 whole or in part under the Public School Capital Outlay Act.  
19 The authority shall enter into contracts with the state fire  
20 marshal, the construction industries division or the  
21 appropriate local authorities to carry out the provisions of  
22 this subsection. Such a contract may provide for initial  
23 estimated payments from the fund prior to the expenditures if  
24 the contract also provides for additional payments from the  
25 fund if the actual expenditures exceed the initial payments and

.170876.3

underscored material = new  
[bracketed material] = delete

1 for repayments back to the fund if the initial payments exceed  
2 the actual expenditures.

3 K. Pursuant to guidelines established by the  
4 council, allocations from the fund may be made to assist school  
5 districts in developing and updating five-year facilities plans  
6 required by the Public School Capital Outlay Act; provided  
7 that:

8 (1) no allocation shall be made unless the  
9 council determines that the school district is willing and able  
10 to pay the portion of the total cost of developing or updating  
11 the plan that is not funded with the allocation from the fund.  
12 Except as provided in Paragraph (2) of this subsection, the  
13 portion of the total cost to be paid with the allocation from  
14 the fund shall be determined pursuant to the methodology in  
15 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978; or

16 (2) the allocation from the fund may be used  
17 to pay the total cost of developing or updating the plan if:

18 (a) the school district has fewer than  
19 an average of six hundred full-time-equivalent students on the  
20 eightieth and one hundred twentieth days of the prior school  
21 year; or

22 (b) the school district meets all of the  
23 following requirements: 1) the school district has fewer than  
24 an average of one thousand full-time-equivalent students on the  
25 eightieth and one hundred twentieth days of the prior school

.170876.3

underscored material = new  
[bracketed material] = delete

1 year; 2) the school district has at least seventy percent of  
2 its students eligible for free or reduced-fee lunch; 3) the  
3 state share of the total cost, if calculated pursuant to the  
4 methodology in Paragraph (5) of Subsection B of Section 22-24-5  
5 NMSA 1978, would be less than fifty percent; and 4) for all  
6 educational purposes, the school district has a residential  
7 property tax rate of at least seven dollars (\$7.00) on each one  
8 thousand dollars (\$1,000) of taxable value, as measured by the  
9 sum of all rates imposed by resolution of the local school  
10 board plus rates set to pay interest and principal on  
11 outstanding school district general obligation bonds.

12 L. Upon application by a school district,  
13 allocations from the fund may be made by the council for the  
14 purpose of demolishing abandoned school district facilities,  
15 provided that:

16 (1) the costs of continuing to insure an  
17 abandoned facility outweigh any potential benefit when and if a  
18 new facility is needed by the school district;

19 (2) there is no practical use for the  
20 abandoned facility without the expenditure of substantial  
21 renovation costs; and

22 (3) the council may enter into an agreement  
23 with the school district under which an amount equal to the  
24 savings to the district in lower insurance premiums are used to  
25 [~~fully or partially~~] reimburse the fund fully or partially for

.170876.3

underscored material = new  
[bracketed material] = delete

1 the demolition costs allocated to the district."

2 Section 3. Section 22-24-5 NMSA 1978 (being Laws 1975,  
3 Chapter 235, Section 5, as amended) is amended to read:

4 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--  
5 APPLICATION--GRANT ASSISTANCE.--

6 A. Applications for grant assistance, [~~the~~]  
7 approval of applications, [~~the~~] prioritization of projects and  
8 grant awards shall be conducted pursuant to the provisions of  
9 this section.

10 B. Except as provided in Sections 22-24-4.3,  
11 22-24-5.4, [~~and~~] 22-24-5.6 and 22-24-5.8 NMSA 1978, the  
12 following provisions govern grant assistance from the fund for  
13 a public school capital outlay project not wholly funded  
14 pursuant to Section 22-24-4.1 NMSA 1978:

15 (1) all school districts are eligible to apply  
16 for funding from the fund, regardless of percentage of  
17 indebtedness;

18 (2) priorities for funding shall be determined  
19 by using the statewide adequacy standards developed pursuant to  
20 Subsection C of this section; provided that:

21 (a) the council shall apply the  
22 standards to charter schools to the same extent that they are  
23 applied to other public schools; and

24 (b) in an emergency in which the health  
25 or safety of students or school personnel is at immediate risk

.170876.3

underscored material = new  
[bracketed material] = delete

1 or in which there is a threat of significant property damage,  
2 the council may award grant assistance for a project using  
3 criteria other than the statewide adequacy standards;

4 (3) the council shall establish criteria to be  
5 used in public school capital outlay projects that receive  
6 grant assistance pursuant to the Public School Capital Outlay  
7 Act. In establishing the criteria, the council shall consider:

8 (a) the feasibility of using design,  
9 build and finance arrangements for public school capital outlay  
10 projects;

11 (b) the potential use of more durable  
12 construction materials that may reduce long-term operating  
13 costs;

14 (c) concepts that promote efficient but  
15 flexible utilization of space; and

16 (d) any other financing or construction  
17 concept that may maximize the dollar effect of the state grant  
18 assistance;

19 (4) no more than ten percent of the combined  
20 total of grants in a funding cycle shall be used for  
21 retrofitting existing facilities for technology infrastructure;

22 (5) except as provided in Paragraph (6), ~~[or]~~  
23 (8) or (9) of this subsection, the state share of a project  
24 approved and ranked by the council shall be funded within  
25 available resources pursuant to the provisions of this

.170876.3

1 paragraph. No later than May 1 of each calendar year, a value  
2 shall be calculated for each school district in accordance with  
3 the following procedure:

4 (a) the final prior year net taxable  
5 value for a school district divided by the MEM for that school  
6 district is calculated for each school district;

7 (b) the final prior year net taxable  
8 value for the whole state divided by the MEM for the state is  
9 calculated;

10 (c) excluding any school district for  
11 which the result calculated pursuant to Subparagraph (a) of  
12 this paragraph is more than twice the result calculated  
13 pursuant to Subparagraph (b) of this paragraph, the results  
14 calculated pursuant to Subparagraph (a) of this paragraph are  
15 listed from highest to lowest;

16 (d) the lowest value listed pursuant to  
17 Subparagraph (c) of this paragraph is subtracted from the  
18 highest value listed pursuant to that subparagraph;

19 (e) the value calculated pursuant to  
20 Subparagraph (a) of this paragraph for the subject school  
21 district is subtracted from the highest value listed in  
22 Subparagraph (c) of this paragraph;

23 (f) the result calculated pursuant to  
24 Subparagraph (e) of this paragraph is divided by the result  
25 calculated pursuant to Subparagraph (d) of this paragraph;

.170876.3

underscoring material = new  
[bracketed material] = delete

1 (g) the sum of the property tax mill  
2 levies for the prior tax year imposed by each school district  
3 on residential property pursuant to Chapter 22, Article 18 NMSA  
4 1978, the Public School Capital Improvements Act, the Public  
5 School Buildings Act, the Education Technology Equipment Act  
6 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978  
7 is calculated for each school district;

8 (h) the lowest value calculated pursuant  
9 to Subparagraph (g) of this paragraph is subtracted from the  
10 highest value calculated pursuant to that subparagraph;

11 (i) the lowest value calculated pursuant  
12 to Subparagraph (g) of this paragraph is subtracted from the  
13 value calculated pursuant to that subparagraph for the subject  
14 school district;

15 (j) the value calculated pursuant to  
16 Subparagraph (i) of this paragraph is divided by the value  
17 calculated pursuant to Subparagraph (h) of this paragraph;

18 (k) if the value calculated for a  
19 subject school district pursuant to Subparagraph (j) of this  
20 paragraph is less than five-tenths, then, except as provided in  
21 Subparagraph (n) or (o) of this paragraph, the value for that  
22 school district equals the value calculated pursuant to  
23 Subparagraph (f) of this paragraph;

24 (l) if the value calculated for a  
25 subject school district pursuant to Subparagraph (j) of this

.170876.3

underscored material = new  
[bracketed material] = delete

1 paragraph is five-tenths or greater, then that value is  
2 multiplied by five-hundredths;

3 (m) if the value calculated for a  
4 subject school district pursuant to Subparagraph (j) of this  
5 paragraph is five-tenths or greater, then the value calculated  
6 pursuant to Subparagraph (l) of this paragraph is added to the  
7 value calculated pursuant to Subparagraph (f) of this  
8 paragraph. Except as provided in Subparagraph (n) or (o) of  
9 this paragraph, the sum equals the value for that school  
10 district;

11 (n) in those instances in which the  
12 calculation pursuant to Subparagraph (k) or (m) of this  
13 paragraph yields a value less than one-tenth, one-tenth shall  
14 be used as the value for the subject school district;

15 (o) in those instances in which the  
16 calculation pursuant to Subparagraph (k) or (m) of this  
17 paragraph yields a value greater than one, one shall be used as  
18 the value for the subject school district;

19 (p) except as provided in Section  
20 22-24-5.7 or 22-24-5.8 NMSA 1978 and except as adjusted  
21 pursuant to Paragraph (6), ~~(8)~~ or (9) of this subsection,  
22 the amount to be distributed from the fund for an approved  
23 project shall equal the total project cost multiplied by a  
24 fraction the numerator of which is the value calculated for the  
25 subject school district in the current year plus the value

.170876.3

underscored material = new  
[bracketed material] = delete

1 calculated for that school district in each of the two  
2 preceding years and the denominator of which is three; and

3 (q) as used in this paragraph: 1) "MEM"  
4 means the average full-time-equivalent enrollment of students  
5 attending public school in a school district on the eightieth  
6 and one hundred twentieth days of the prior school year; 2)  
7 "total project cost" means the total amount necessary to  
8 complete the public school capital outlay project less any  
9 insurance reimbursement received by the school district for the  
10 project; and 3) in the case of a state-chartered charter school  
11 that has submitted an application for grant assistance pursuant  
12 to this section, the "value calculated for the subject school  
13 district" means the value calculated for the school district in  
14 which the state-chartered charter school is physically located;

15 (6) the amount calculated pursuant to  
16 Subparagraph (p) of Paragraph (5) of this subsection shall be  
17 reduced by the following procedure:

18 (a) the total of all legislative  
19 appropriations made after January 1, 2003 for nonoperating  
20 purposes either directly to the subject school district or to  
21 another governmental entity for the purpose of passing the  
22 money through directly to the subject school district, and not  
23 rejected by the subject school district, is calculated;  
24 provided that: 1) an appropriation made in a fiscal year shall  
25 be deemed to be accepted by a school district unless, prior to

.170876.3

underscored material = new  
[bracketed material] = delete

1 June 1 of that fiscal year, the school district notifies the  
2 department of finance and administration and the public  
3 education department that the district is rejecting the  
4 appropriation; 2) the total shall exclude any educational  
5 technology appropriation made prior to January 1, 2005 unless  
6 the appropriation was on or after January 1, 2003 and not  
7 previously used to offset distributions pursuant to the  
8 Technology for Education Act; 3) the total shall exclude any  
9 appropriation previously made to the subject school district  
10 that is reauthorized for expenditure by another recipient; 4)  
11 the total shall exclude one-half of the amount of any  
12 appropriation made or reauthorized after January 1, 2007 if the  
13 purpose of the appropriation or reauthorization is to fund, in  
14 whole or in part, a capital outlay project that, when  
15 prioritized by the council pursuant to this section either in  
16 the immediately preceding funding cycle or in the current  
17 funding cycle, ranked in the top one hundred fifty projects  
18 statewide; ~~and~~ 5) the total shall exclude the proportionate  
19 share of any appropriation made or reauthorized after January  
20 1, 2008 for a capital project that will be jointly used by a  
21 governmental entity other than the subject school district.  
22 Pursuant to criteria adopted by rule of the council and based  
23 upon the proposed use of the capital project, the council shall  
24 determine the proportionate share to be used by the  
25 governmental entity and excluded from the total; and 6) unless

.170876.3

1 the grant award is made to the state-chartered charter school  
2 or unless the appropriation was previously used to calculate a  
3 reduction pursuant to this paragraph, the total shall exclude  
4 appropriations made after January 1, 2007 for nonoperating  
5 purposes of a specific state-chartered charter school,  
6 regardless of whether the charter school is a state-chartered  
7 charter school at the time of the appropriation or later opts  
8 to become a state-chartered charter school;

9 (b) the applicable fraction used for the  
10 subject school district and the current calendar year for the  
11 calculation in Subparagraph (p) of Paragraph (5) of this  
12 subsection is subtracted from one;

13 (c) the value calculated pursuant to  
14 Subparagraph (a) of this paragraph for the subject school  
15 district is multiplied by the amount calculated pursuant to  
16 Subparagraph (b) of this paragraph for that school district;

17 (d) the total amount of reductions for  
18 the subject school district previously made pursuant to  
19 Subparagraph (e) of this paragraph for other approved public  
20 school capital outlay projects is subtracted from the amount  
21 calculated pursuant to Subparagraph (c) of this paragraph; and

22 (e) the amount calculated pursuant to  
23 Subparagraph (p) of Paragraph (5) of this subsection shall be  
24 reduced by the amount calculated pursuant to Subparagraph (d)  
25 of this paragraph;

.170876.3

underscored material = new  
[bracketed material] = delete

1 (7) as used in [~~Paragraphs (5) and (6) of~~]  
2 this subsection:

3 (a) "governmental entity" includes an  
4 Indian nation, tribe or pueblo; and

5 (b) "subject school district" means the  
6 school district that has submitted the application for funding  
7 and in which the approved public school capital outlay project  
8 will be located;

9 (8) the amount calculated pursuant to  
10 Subparagraph (p) of Paragraph (5) of this subsection, after any  
11 reduction pursuant to Paragraph (6) of this subsection, may be  
12 increased by an additional five percent if the council finds  
13 that the subject school district has been exemplary in  
14 implementing and maintaining a preventive maintenance program.  
15 The council shall adopt such rules as are necessary to  
16 implement the provisions of this paragraph;

17 [~~(8)~~] (9) the council may adjust the amount of  
18 local share otherwise required if it determines that a school  
19 district has used all of its local resources. Before making  
20 any adjustment to the local share, the council shall consider  
21 whether:

22 (a) the school district has insufficient  
23 bonding capacity over the next four years to provide the local  
24 match necessary to complete the project and, for all  
25 educational purposes, has a residential property tax rate of at  
.170876.3

underscored material = new  
[bracketed material] = delete

1 least ten dollars (\$10.00) on each one thousand dollars  
2 (\$1,000) of taxable value, as measured by the sum of all rates  
3 imposed by resolution of the local school board plus rates set  
4 to pay interest and principal on outstanding school district  
5 general obligation bonds;

6 (b) the school district: 1) has fewer  
7 than an average of eight hundred full-time-equivalent students  
8 on the eightieth and one hundred twentieth days of the prior  
9 school year; 2) has at least seventy percent of its students  
10 eligible for free or reduced-fee lunch; 3) has a share of the  
11 total project cost, as calculated pursuant to provisions of  
12 this section, that would be greater than fifty percent; and 4)  
13 for all educational purposes, has a residential property tax  
14 rate of at least seven dollars (\$7.00) on each one thousand  
15 dollars (\$1,000) of taxable value, as measured by the sum of  
16 all rates imposed by resolution of the local school board plus  
17 rates set to pay interest and principal on outstanding school  
18 district general obligation bonds; or

19 (c) the school district [~~has~~]: 1) has  
20 an enrollment growth rate over the previous school year of at  
21 least two and one-half percent; 2) pursuant to its five-year  
22 facilities plan, will be building a new school within the next  
23 two years; and 3) for all educational purposes, has a  
24 residential property tax rate of at least ten dollars (\$10.00)  
25 on each one thousand dollars (\$1,000) of taxable value, as

.170876.3

underscored material = new  
[bracketed material] = delete

1 measured by the sum of all rates imposed by resolution of the  
2 local school board plus rates set to pay interest and principal  
3 on outstanding school district general obligation bonds; and

4 [~~(9)~~] (10) no application for grant assistance  
5 from the fund shall be approved unless the council determines  
6 that:

7 (a) the public school capital outlay  
8 project is needed and included in the school district's  
9 five-year facilities plan among its top priorities;

10 (b) the school district has used its  
11 capital resources in a prudent manner;

12 (c) the school district has provided  
13 insurance for buildings of the school district in accordance  
14 with the provisions of Section 13-5-3 NMSA 1978;

15 (d) the school district has submitted a  
16 five-year facilities plan that includes: 1) enrollment  
17 projections; 2) a current preventive maintenance plan that has  
18 been approved by the council pursuant to Section 22-24-5.3 NMSA  
19 1978 and that is followed by each public school in the  
20 district; 3) the capital needs of charter schools located in  
21 the school district; and 4) projections for the facilities  
22 needed in order to maintain a full-day kindergarten program;

23 (e) the school district is willing and  
24 able to pay any portion of the total cost of the public school  
25 capital outlay project that, according to Paragraph (5), (6),

.170876.3

underscored material = new  
[bracketed material] = delete

1     ~~[e]~~ (8) or (9) of this subsection, is not funded with grant  
2     assistance from the fund; provided that school district funds  
3     used for a project that was initiated after September 1, 2002  
4     when the statewide adequacy standards were adopted, but before  
5     September 1, 2004 when the standards were first used as the  
6     basis for determining the state and school district share of a  
7     project, may be applied to the school district portion required  
8     for that project;

9                             (f) the application includes the capital  
10    needs of any charter school located in the school district or  
11    the school district has shown that the facilities of the  
12    charter school have a smaller deviation from the statewide  
13    adequacy standards than other district facilities included in  
14    the application; and

15                            (g) the school district has agreed, in  
16    writing, to comply with any reporting requirements or  
17    conditions imposed by the council pursuant to Section 22-24-5.1  
18    NMSA 1978.

19                            C. After consulting with the public school capital  
20    outlay oversight task force and other experts, the council  
21    shall regularly review and update statewide adequacy standards  
22    applicable to all school districts. The standards shall  
23    establish the acceptable level for the physical condition and  
24    capacity of buildings, the educational suitability of  
25    facilities and the need for technological infrastructure.

.170876.3

underscored material = new  
[bracketed material] = delete

1 Except as otherwise provided in the Public School Capital  
2 Outlay Act, the amount of outstanding deviation from the  
3 standards shall be used by the council in evaluating and  
4 prioritizing public school capital outlay projects.

5 D. The acquisition of a facility by a school  
6 district or charter school pursuant to a financing agreement  
7 that provides for lease payments with an option to purchase for  
8 a price that is reduced according to lease payments made may be  
9 considered a public school capital outlay project and eligible  
10 for grant assistance under this section pursuant to the  
11 following criteria:

12 (1) no grant shall be awarded unless the  
13 council finds that, prior to the purchase of the facility by  
14 the school district or charter school, the facility will equal  
15 or exceed the statewide adequacy standards and the building  
16 standards for public school facilities;

17 (2) no grant shall be awarded unless the  
18 school district and the need for the facility meet all of the  
19 requirements for grant assistance pursuant to the Public School  
20 Capital Outlay Act;

21 (3) the total project cost shall equal the  
22 total payments that would be due under the agreement if the  
23 school district or charter school would eventually acquire  
24 title to the facility;

25 (4) the portion of the total project cost to

.170876.3

1 be paid from the fund may be awarded as one grant, but  
2 disbursements from the fund shall be made from time to time as  
3 lease payments become due;

4 (5) the portion of the total project cost to  
5 be paid by the school district or charter school may be paid  
6 from time to time as lease payments become due; and

7 (6) neither a grant award nor any provision of  
8 the Public School Capital Outlay Act creates a legal obligation  
9 for the school district or charter school to continue the lease  
10 from year to year or to purchase the facility.

11 E. In order to encourage private capital investment  
12 in the construction of public school facilities, the purchase  
13 of a privately owned school facility that is, at the time of  
14 application, in use by a school district may be considered a  
15 public school capital outlay project and eligible for grant  
16 assistance pursuant to this section if the council finds that:

17 (1) at the time of the initial use by the  
18 school district, the facility to be purchased equaled or  
19 exceeded the statewide adequacy standards and the building  
20 standards for public school facilities;

21 (2) at the time of application, attendance at  
22 the facility to be purchased is at seventy-five percent or  
23 greater of design capacity and the attendance at other schools  
24 in the school district that the students at the facility would  
25 otherwise attend is at eighty-five percent or greater of design

underscoring material = new  
[bracketed material] = delete

1 capacity; and

2 (3) the school district and the capital outlay  
3 project meet all of the requirements for grant assistance  
4 pursuant to the Public School Capital Outlay Act; provided  
5 that, when determining the deviation from the statewide  
6 adequacy standards for the purposes of evaluating and  
7 prioritizing the project, the students using the facility shall  
8 be deemed to be attending other schools in the school district.

9 F. It is the intent of the legislature that grant  
10 assistance made pursuant to this section allows every school  
11 district to meet the standards developed pursuant to Subsection  
12 C of this section; provided, however, that nothing in the  
13 Public School Capital Outlay Act or the development of  
14 standards pursuant to that act prohibits a school district from  
15 using local funds to exceed the statewide adequacy standards.

16 G. Upon request, the council shall work with, and  
17 provide assistance and information to, the public school  
18 capital outlay oversight task force.

19 H. The council may establish committees or task  
20 forces, not necessarily consisting of council members, and may  
21 use the committees or task forces, as well as existing agencies  
22 or organizations, to conduct studies, conduct surveys, submit  
23 recommendations or otherwise contribute expertise from the  
24 public schools, programs, interest groups and segments of  
25 society most concerned with a particular aspect of the

.170876.3

underscored material = new  
[bracketed material] = delete

1 council's work.

2 I. Upon the recommendation of the public school  
3 facilities authority, the council shall develop building  
4 standards for public school facilities and shall promulgate  
5 other such rules as are necessary to carry out the provisions  
6 of the Public School Capital Outlay Act.

7 J. No later than December 15 of each year, the  
8 council shall prepare a report summarizing its activities  
9 during the previous fiscal year. The report shall describe in  
10 detail all projects funded, the progress of projects previously  
11 funded but not completed, the criteria used to prioritize and  
12 fund projects and all other council actions. The report shall  
13 be submitted to the public education commission, the governor,  
14 the legislative finance committee, the legislative education  
15 study committee and the legislature."

16 Section 4. Section 22-24-5.4 NMSA 1978 (being Laws 2004,  
17 Chapter 125, Section 10) is amended to read:

18 "22-24-5.4. RECALCITRANT SCHOOL DISTRICTS--COURT ACTION  
19 TO ENFORCE CONSTITUTIONAL COMPLIANCE--IMPOSITION OF PROPERTY  
20 TAX.--

21 A. The council may bring an action against a school  
22 district pursuant to the provisions of this section if, based  
23 upon information submitted to the council by the public school  
24 facilities authority, the council determines that:

25 (1) the physical condition of a public school

.170876.3

underscored material = new  
[bracketed material] = delete

1 facility in the school district is so inadequate that the  
2 facility or the education received by students attending the  
3 facility is below the minimum required by the constitution of  
4 New Mexico;

5 (2) the school district is not taking the  
6 necessary steps to bring the facility up to the  
7 constitutionally required minimum; and

8 (3) either:

9 (a) the school district has not applied  
10 for the grant assistance necessary to bring the facility up to  
11 minimum constitutional standards; or

12 (b) the school district is unwilling to  
13 meet all of the requirements for the approval of an application  
14 for grant assistance pursuant to Paragraph [~~9~~] (10) of  
15 Subsection B of Section 22-24-5 NMSA 1978.

16 B. An action brought pursuant to this section shall  
17 be brought by the council in the name of the state against the  
18 school district in the district court for Santa Fe county.

19 C. After a hearing and consideration of the  
20 evidence, if the court finds that the council's determination  
21 pursuant to Subsection A of this section was correct, the court  
22 shall:

23 (1) order the council to expend sufficient  
24 resources necessary to bring the facility up to the minimum  
25 level required by the constitution of New Mexico;

.170876.3

underscored material = new  
[bracketed material] = delete

1 (2) order the school district to comply with  
2 Paragraph [~~9~~] (10) of Subsection B of Section 22-24-5 NMSA  
3 1978 and to take all other actions necessary to facilitate the  
4 completion of the project ordered pursuant to Paragraph (1) of  
5 this subsection; and

6 (3) enter a judgment against the school  
7 district for court costs and attorney fees and the necessary  
8 amount to satisfy the school district share, as determined by  
9 the formula prescribed by Subsection B of Section 22-24-5 NMSA  
10 1978, for the project ordered pursuant to Paragraph (1) of this  
11 subsection.

12 D. The amount of a judgment entered against a  
13 school district pursuant to Paragraph (3) of Subsection C of  
14 this section is a public debt of the school district. If the  
15 court finds that the debt cannot be satisfied with available  
16 school district funds, other than funds needed for the  
17 operation of the public schools and other existing obligations,  
18 the court shall order the imposition of a property tax on all  
19 taxable property allocated to the school district at a rate  
20 sufficient to pay the judgment, with accrued interest, within a  
21 reasonable time as determined by the court. After paying court  
22 costs and attorney fees, amounts received pursuant to this  
23 subsection shall be deposited by the council into the fund."

24 Section 5. A new section of the Public School Capital  
25 Outlay Act, Section 22-24-5.8 NMSA 1978, is enacted to read:

.170876.3

underscored material = new  
[bracketed material] = delete

1 "22-24-5.8. [NEW MATERIAL] SUPPLEMENTAL FUNDING FOR  
2 PROJECTS IN CERTAIN SCHOOL DISTRICTS.--

3 A. A school district receiving grant assistance  
4 from the fund pursuant to Section 22-24-5 NMSA 1978 for a  
5 public school capital outlay project shall receive an  
6 additional grant from the fund if the school district and  
7 proposed use of the additional grant qualify pursuant to the  
8 provisions of Subsection B of this section.

9 B. A school district shall receive the additional  
10 grant if the council determines that:

11 (1) in calculating the grant assistance from  
12 the fund for the project pursuant to Section 22-24-5 NMSA 1978,  
13 the value calculated for the school district pursuant to  
14 Subparagraph (k), (m), (n) or (o) of Paragraph (5) of  
15 Subsection B of that section is equal to or greater than seven-  
16 tenths;

17 (2) averaged over the previous four property  
18 tax years, the school district had a residential property tax  
19 rate of at least nine dollars (\$9.00) on each one thousand  
20 dollars (\$1,000) of taxable value, as measured by the sum of  
21 all rates imposed by resolution of the local school board plus  
22 rates set to pay interest and principal on outstanding school  
23 district general obligation bonds;

24 (3) at least seventy percent of the students  
25 in the school district are eligible for free or reduced-fee

.170876.3

underscored material = new  
[bracketed material] = delete

1 lunch;

2 (4) the school district does not have  
3 sufficient resources to expend on the project so it is unlikely  
4 that the project will ever exceed the statewide adequacy  
5 standards;

6 (5) the local community does not have adequate  
7 infrastructure to compensate for the school district's lack of  
8 resources; and

9 (6) the planned use of the additional grant  
10 will enhance public school education in the school district,  
11 will further the school district's educational plan for student  
12 success and is a prudent use of state money.

13 C. The amount of an additional grant awarded  
14 pursuant to this section shall equal the total project cost  
15 multiplied by the lesser of:

16 (1) the value calculated for the school  
17 district pursuant to Subparagraph (k), (m), (n) or (o) of  
18 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978  
19 minus six-tenths; or

20 (2) twenty-five hundredths.

21 D. All provisions of the Public School Capital  
22 Outlay Act relating to the expenditure of other grants awarded  
23 from the fund, including those provisions relating to  
24 reporting, oversight, project access and accountability, apply  
25 to the use and expenditure of additional grants made pursuant

.170876.3

underscored material = new  
[bracketed material] = delete

1 to this section."

2 Section 6. Section 22-24-7 NMSA 1978 (being Laws 2001,  
3 Chapter 338, Section 12, as amended) is amended to read:

4 "22-24-7. PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK  
5 FORCE--CREATION--STAFF.--

6 A. The "public school capital outlay oversight task  
7 force" is created. The task force consists of [~~twenty-six~~  
8 twenty-five] members as follows:

9 (1) the secretary of finance and  
10 administration or the secretary's designee;

11 (2) the secretary of public education or the  
12 secretary's designee;

13 [~~(3) the state investment officer or the state  
14 investment officer's designee;~~

15 ~~(4)]~~ (3) the speaker of the house of  
16 representatives or the speaker's designee;

17 [~~(5)]~~ (4) the president pro tempore of the  
18 senate or the president pro tempore's designee;

19 [~~(6)]~~ (5) the chairs of the house  
20 appropriations and finance committee, the senate finance  
21 committee, the senate education committee and the house  
22 education committee or their designees;

23 [~~(7)]~~ (6) two minority party members of the  
24 house of representatives, appointed by the New Mexico  
25 legislative council;

.170876.3

underscored material = new  
[bracketed material] = delete

1                   ~~[(8)]~~ (7) two minority party members of the  
2 senate, appointed by the New Mexico legislative council;

3                   ~~[(9)]~~ (8) a member of the interim legislative  
4 committee charged with the oversight of Indian affairs,  
5 appointed by the New Mexico legislative council, provided that  
6 the member shall rotate annually between a senate member and a  
7 member of the house of representatives;

8                   ~~[(10)]~~ (9) a member of the house of  
9 representatives and a member of the senate who represent  
10 districts with school districts receiving federal funds  
11 commonly known as "PL 874" funds or "impact aid", appointed by  
12 the New Mexico legislative council;

13                   ~~[(11)]~~ (10) two public members who have  
14 expertise in education and finance appointed by the speaker of  
15 the house of representatives;

16                   ~~[(12)]~~ (11) two public members who have  
17 expertise in education and finance appointed by the president  
18 pro tempore of the senate;

19                   ~~[(13)]~~ (12) three public members, two of whom  
20 are residents of school districts that receive grants from the  
21 federal government as assistance to areas affected by federal  
22 activity authorized in accordance with Title 20 of the United  
23 States Code, appointed by the governor; and

24                   ~~[(14)]~~ (13) three superintendents of school  
25 districts or their designees, two of whom are from school

.170876.3

underscoring material = new  
[bracketed material] = delete

1 districts that receive grants from the federal government as  
2 assistance to areas affected by federal activity authorized in  
3 accordance with Title 20 of the United States Code, appointed  
4 by the New Mexico legislative council in consultation with the  
5 governor.

6 B. The chair of the public school capital outlay  
7 oversight task force shall be elected by the task force. The  
8 task force shall meet at the call of the chair, but no more  
9 than four times per calendar year.

10 C. Non-ex-officio members of the task force shall  
11 serve at the pleasure of their appointing authorities.

12 D. The public members of the public school capital  
13 outlay oversight task force shall receive per diem and mileage  
14 pursuant to the Per Diem and Mileage Act.

15 E. The legislative council service, with assistance  
16 from the public school facilities authority, the department of  
17 finance and administration, the public education department,  
18 the legislative education study committee and the legislative  
19 finance committee, shall provide staff for the public school  
20 capital outlay oversight task force."

21 Section 7. Section 22-25-1 NMSA 1978 (being Laws 1978  
22 (S.S.), Chapter 5, Section 1, as amended) is amended to read:

23 "22-25-1. SHORT TITLE.--Chapter 22, Article 25 NMSA 1978  
24 may be cited as the "Public School Capital Improvements Act"."

25 Section 8. Section 22-25-9 NMSA 1978 (being Laws 1975

.170876.3

underscored material = new  
[bracketed material] = delete

1 (S.S.), Chapter 5, Section 9, as amended) is amended to read:

2 "22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT IMPOSING  
3 TAX UNDER CERTAIN CIRCUMSTANCES.--

4 A. Except as provided in Section 22-25-11 NMSA 1978  
5 or in Subsection C or G of this section, the secretary shall  
6 distribute to any school district that has imposed a tax under  
7 the Public School Capital Improvements Act an amount from the  
8 public school capital improvements fund that is equal to the  
9 amount by which the revenue estimated to be received from the  
10 imposed tax, at the rate certified by the department of finance  
11 and administration in accordance with Section 22-25-7 NMSA  
12 1978, assuming a one hundred percent collection rate, is less  
13 than an amount calculated by multiplying the school district's  
14 first forty days' total program units by the amount specified  
15 in Subsection B of this section and further multiplying the  
16 product obtained by the tax rate approved by the qualified  
17 electors in the most recent election on the question of  
18 imposing a tax under the Public School Capital Improvements  
19 Act. The distribution shall be made each year that the tax is  
20 imposed in accordance with Section 22-25-7 NMSA 1978; provided  
21 that no state distribution from the public school capital  
22 improvements fund may be used for capital improvements to any  
23 administration building of a school district. In the event  
24 that sufficient funds are not available in the public school  
25 capital improvements fund to make the state distribution

.170876.3

underscored material = new  
[bracketed material] = delete

1 provided for in this section, the dollar per program unit  
2 figure shall be reduced as necessary.

3 B. In calculating the state distribution pursuant  
4 to Subsection A of this section, the following amounts shall be  
5 used:

6 (1) the amount calculated pursuant to  
7 Subsection D of this subsection per program unit; and

8 (2) an additional amount certified to the  
9 secretary by the public school capital outlay council. No  
10 later than June 1 of each year, the council shall determine the  
11 amount needed in the next fiscal year for public school capital  
12 outlay projects pursuant to the Public School Capital Outlay  
13 Act and the amount of revenue, from all sources, available for  
14 the projects. If, in the sole discretion of the council, the  
15 amount available exceeds the amount needed, the council may  
16 certify an additional amount pursuant to this paragraph;  
17 provided that the sum of the amount calculated pursuant to this  
18 paragraph plus the amount in Paragraph (1) of this subsection  
19 shall not result in a total statewide distribution that, in the  
20 opinion of the council, exceeds one-half of the total revenue  
21 estimated to be received from taxes imposed pursuant to the  
22 Public School Capital Improvements Act.

23 C. For any fiscal year notwithstanding the amount  
24 calculated to be distributed pursuant to Subsections A and B of  
25 this section, except as provided in Subsection G of this

.170876.3

underscored material = new  
~~[bracketed material] = delete~~

1 section, a school district, the voters of which have approved a  
2 tax pursuant to Section 22-25-3 NMSA 1978, shall not receive a  
3 distribution less than the amount calculated pursuant to  
4 Subsection E of this section, multiplied by the school  
5 district's first forty days' total program units and further  
6 multiplying the product obtained by the approved tax rate.

7 D. For purposes of calculating the distribution  
8 pursuant to Subsection B of this section, the amount used in  
9 Paragraph (1) of that subsection shall equal seventy dollars  
10 (\$70.00) in fiscal year 2008 and in each subsequent fiscal year  
11 shall equal the amount for the previous fiscal year adjusted by  
12 the percentage increase between the next preceding calendar  
13 year and the preceding calendar year of the consumer price  
14 index for the United States, all items, as published by the  
15 United States department of labor.

16 E. For purposes of calculating the minimum  
17 distribution pursuant to Subsection C of this section, the  
18 amount used in that subsection shall equal five dollars (\$5.00)  
19 through fiscal year 2005 and in each subsequent fiscal year  
20 shall equal the amount for the previous fiscal year adjusted by  
21 the percentage increase between the next preceding calendar  
22 year and the preceding calendar year of the consumer price  
23 index for the United States, all items, as published by the  
24 United States department of labor.

25 F. In expending distributions made pursuant to this

.170876.3

underscored material = new  
[bracketed material] = delete

1 section, school districts shall give priority to maintenance  
2 projects, including payments under contracts for maintenance  
3 support services. In addition, distributions made pursuant to  
4 this section may be expended by school districts for the school  
5 district portion of:

6 (1) the total project cost for roof repair or  
7 replacement required by Section 22-24-4.3 NMSA 1978; or

8 (2) payments made under a financing agreement  
9 entered into by a school district or a charter school for the  
10 leasing of a building or other real property with an option to  
11 purchase for a price that is reduced according to the payments  
12 made, if the school district has received a grant for the state  
13 share of the payments pursuant to Subsection D of Section  
14 22-24-5 NMSA 1978.

15 G. If a serious deficiency in a roof of a public  
16 school facility has been corrected pursuant to Section  
17 22-24-4.4 NMSA 1978 and the school district has refused to pay  
18 its share of the cost as determined by that section, until the  
19 public school capital outlay fund is reimbursed in full for the  
20 share attributed to the district, the distribution calculated  
21 pursuant to this section shall not be made to the school  
22 district but shall be made to the public school capital outlay  
23 fund.

24 H. In making distributions pursuant to this  
25 section, the secretary shall include such reporting

.170876.3

underscored material = new  
[bracketed material] = delete

1 requirements and conditions as are required by rule of the  
2 public school capital outlay council. The council shall adopt  
3 such requirements and conditions as are necessary to ensure  
4 that the distributions are expended in the most prudent manner  
5 possible and are consistent with the original purpose as  
6 specified in the authorizing resolution. Copies of reports or  
7 other information received by the secretary in response to the  
8 requirements and conditions shall be forwarded to the council."

9 Section 9. A new section of the Public School Capital  
10 Improvements Act, Section 22-25-11 NMSA 1978, is enacted to  
11 read:

12 "22-25-11. [NEW MATERIAL] AUTHORIZATION FOR ADDITIONAL  
13 MILLAGE.--

14 A. In addition to the tax imposed pursuant to  
15 Section 22-25-3 NMSA 1978, a local school board may adopt a  
16 resolution to submit to the qualified electors of the school  
17 district the question of whether a property tax should be  
18 imposed upon the net taxable value of property allocated to the  
19 school district under the Property Tax Code at a rate not to  
20 exceed that specified in the resolution for the purpose of  
21 capital improvements in the school district. The resolution  
22 shall:

23 (1) identify the capital improvements for  
24 which the revenue proposed to be produced will be used;

25 (2) specify the rate of the proposed tax,

.170876.3

underscored material = new  
[bracketed material] = delete

1 which shall not exceed one dollar (\$1.00) on each one thousand  
2 dollars (\$1,000) of net taxable value of property allocated to  
3 the school district under the Property Tax Code;

4 (3) specify the date an election will be held  
5 to submit the question of imposition of the tax to the  
6 qualified electors of the school district; and

7 (4) limit the imposition of the proposed tax  
8 to no more than six property tax years.

9 B. All provisions of the Public School Capital  
10 Improvements Act that apply to the tax imposition provided for  
11 in Section 22-25-3 NMSA 1978 apply to the tax imposition  
12 provided for in this section except that a tax imposed pursuant  
13 to this section shall not be taken into account when  
14 calculating the state distribution pursuant to Section 22-25-9  
15 NMSA 1978."

16 Section 10. [NEW MATERIAL] TRANSFER OF AN AMOUNT EQUAL TO  
17 A PORTION OF INDIAN GAMING REVENUE TO THE PUBLIC SCHOOL  
18 FACILITY OPPORTUNITY FUND.--On July 15, 2009, July 15, 2010 and  
19 July 15, 2011, an amount equal to the lesser of eighteen  
20 million dollars (\$18,000,000) or thirty percent of the net  
21 receipts of revenue paid to the state pursuant to Indian gaming  
22 compacts during the immediately preceding fiscal year, as  
23 determined by the secretary of finance and administration,  
24 shall be transferred from the general fund to the public school  
25 facility opportunity fund.

.170876.3

underscored material = new  
[bracketed material] = delete

1           Section 11. Laws 2006, Chapter 95, Section 14 is amended  
2 to read:

3           "Section 14. APPROPRIATIONS.--

4           A. Two million five hundred thousand dollars  
5 (\$2,500,000) is appropriated from the public school capital  
6 outlay fund to the public school facilities authority for  
7 expenditure in fiscal years 2006 through [~~2008~~] 2009 for  
8 continuing the development and implementation of a uniform  
9 web-based facility information management system for the public  
10 schools pursuant to the provisions of Section 22-24-5.3 NMSA  
11 1978. Any unexpended or unencumbered balance remaining at the  
12 end of fiscal year [~~2008~~] 2009 shall revert to the public  
13 school capital outlay fund.

14           B. Three hundred thousand dollars (\$300,000) is  
15 appropriated from the public school capital outlay fund to the  
16 public school facilities authority for expenditure in fiscal  
17 years 2007 and 2008 for the purpose of improving the indoor air  
18 quality of public schools by implementing the New Mexico indoor  
19 air quality tools for schools program pursuant to criteria  
20 developed by the public school facilities authority in  
21 consultation with the department of environment, the public  
22 education department, the department of health, the energy,  
23 minerals and natural resources department and the children,  
24 youth and families department. Any unexpended or unencumbered  
25 balance remaining at the end of fiscal year 2008 shall revert

.170876.3

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

to the public school capital outlay fund."

- 45 -